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GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 3:10-cv-03561-WHA

**REPLY IN SUPPORT OF DEFENDANT
GOOGLE INC.'S MOTION TO RETAIN
CONFIDENTIALITY DESIGNATIONS**

Hearing Date: November 17, 2011
Time: 8:00 a.m.
Judge: Hon. William Alsup

1 Google respectfully disagrees with the Court's October 20, 2011 Order (Dkt. 546)
2 holding that the Lindholm email is not protected by attorney-client privilege or work-product
3 immunity. Google intends to seek appellate review of that decision. In order to preserve its
4 ability to seek that relief, Google must take all "reasonable steps" available to prevent disclosure
5 of the information Google contends is privileged and confidential. *See* Fed. R. Evid. 502(b). As
6 a result, Google cannot withdraw this motion, as Oracle has invited it to do.

7 Moreover, the only reason that the contents of the Lindholm email featured in news
8 coverage before October 20, 2011 was because of Oracle's violation of the terms of the
9 Stipulated Protective Order. Had Oracle complied with the prior notice requirement of Section
10 5.2(b) of the Stipulated Protective Order (Dkt. 66), Google would have had the opportunity to
11 assert its privilege claims before Oracle published the contents of a draft version of the email in
12 open court, and the contents of the document would not have reached the public until the merits
13 of the privilege dispute were adjudicated. The unfortunate fact that the contents of the contested
14 documents were partially published before the Court even ruled upon Google's privilege claim is
15 therefore solely the result of Oracle's violation of the agreed-upon process, and should not be
16 considered as a reason for denying Google relief under the protective order.

17 For the foregoing reasons, and those expressed in Google's opening memorandum,
18 Google's motion should be granted, and the challenged documents should retain their AEO
19 designations.

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21 Dated: November 1, 2011

KEKER & VAN NEST LLP

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23 By: s/ Robert A. Van Nest

24 ROBERT A. VAN NEST
25 Attorneys for Defendant
26 GOOGLE INC.
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